



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 10, 1998

Mr. James Kent Schuster  
Assistant General Counsel  
The Texas A&M University System  
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College Station, Texas 77840-7896

OR98-2152

Dear Mr. Schuster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118883.

The Texas A&M University System (the "system") received a request for documents relating to the contract for and financing of Texas A&M University's Recreational Sports Building and Natatorium. You have enclosed a representative sample of the requested information<sup>1</sup> and claim that the information is excepted from required public disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted documents.

Section 552.103(a), the "litigation exception," excepts from required public disclosure information relating to litigation to which the governmental body is or may be a party. The system has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the system must show that 1) litigation is pending or reasonably anticipated, and 2) the information at issue is related to that litigation. *University of Tex. Law School v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no writ); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Decision No. 551 at 4 (1990) . The system must meet both prongs of this test for information to be excepted under section 552.103(a). Once the litigation has concluded, section 552.103(a) is no longer applicable. ORD No. 551 at 4. In addition, if the opposing party in litigation has seen or had access to the requested information, there is no justification for withholding the information from the requestor. See Open Records Decision Nos. 349 (1982), 320 (1982).

You inform this office that DalMac Construction Company, Inc. ("DalMac") filed a lawsuit against the system for alleged damages relating to the construction project. You further explain that although the court granted the system's Plea to the Jurisdiction and dismissed the lawsuit, DalMac has filed a Motion for Reconsideration and a Motion for New Trial. Thus, we conclude that you have shown that litigation is pending and that the requested information relates to the pending suit. Accordingly, you may withhold most of the requested information pursuant to section 552.103(a). However, you must release the document that you indicate had been released to the public in 1996. Open Records Decision Nos. 518 (1989) (voluntary release to any member of the public makes information subject to further disclosure), 436 (1986). Additionally, the Certificate for Resolution and the resolution that was adopted by the system's Board of Regents in a regular meeting may not be withheld under section 552.103(a) and must be disclosed. Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records").

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 118883

Enclosures: Submitted documents

cc: Mr. William M. Coats  
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(w/o enclosures)